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PATENT
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Paul T. Kolen et al.
Serial No.: 08/450,641
Filed : May 25, 1995
Title : COLD THERAPY APPARATUS

Art Unit: 3311
Examiner: R. Nasser

Assistant Commissioner for Patents
Washington, DC 20231

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INFORMATION DISCLOSURE STATEMENT

GROUP 3300

Applicants call the examiner's attention to the following statement of facts.

Before March 1, 1994, the inventors met separately with representatives of several different companies that sell products to the orthopedic market and disclosed a working prototype of a therapy unit that included every feature recited in at least claim 1 of the pending application. The inventors proposed to grant exclusive distributorship rights in a therapy unit to a company that would provide seed money which the inventors would use to manufacture commercial versions of their therapy unit. Alternatively, the inventors proposed to grant a company all right, title and interest in the therapy unit, including future patent rights, in exchange for a share of the proceeds of any commercialization or a lump sum payment. A

Date of Deposit October 23, 1997

I hereby certify under 37 CFR 1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated above and is addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

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working prototype of the therapy unit disclosed at these meetings included every feature recited in claim 1 of the above-captioned pending application. At the time of the disclosures, the firm terms of a potential agreement, including price, quantities, royalty rates or the lump sum amount, were not discussed. The meeting amounted to no more than a "dog and pony show" to determine whether there was any interest in the invention.

None of the companies approached by the inventors expressed any interest in either of the inventors' proposals. Apparently, the prototype was too expensive to manufacture given the expected market demand, and it was unclear, at the time, whether Medicare and other insurer's would reimburse health care providers for the purchase of such units. The inventors did not enter into an agreement until February 26, 1996. The disclosures were made with non-disclosure agreements in place. The inventors retained possession and were in control of the prototype at all times during the relevant discussions.

The prototype included a primary reservoir, a secondary reservoir, two pumps, a thermistor for measuring the temperature of water in the secondary reservoir, and a therapy pad. One pump circulated water between the secondary reservoir and the therapy pad, and the other pump forced water from the primary reservoir into the secondary reservoir when the temperature of the water in the secondary reservoir rose above a desired preset temperature. The prototype could maintain a desired temperature in the secondary reservoir with an accuracy of about $\pm 0.1^{\circ}$ C. The prototype is shown in Fig. 7 and is described at page 10, line 1 through page 11, line 19, of pending application Serial No. 08/700,290, filed August 20, 1996.

This statement is being filed before the receipt of a first Office Action on the merits. Please apply any charges or credits to Deposit Account 06-1050.

Respectfully submitted,

Date: 10/23/97



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